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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,678	03/11/2004	Max F. Rothschild	P04474US02	6258

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MCKEE, VOORHEES & SEASE, P.L.C.
801 GRAND AVENUE
SUITE 3200
DES MOINES, IA 50309-2721

EXAMINER

SWITZER, JULIET CAROLINE

ART UNIT	PAPER NUMBER
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1634

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/798,678

Applicant(s)

ROTHSCHILD ET AL.

Examiner

Juliet C. Switzer

Art Unit

1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-12,23-25,30-36 and 43-51.
Claim(s) withdrawn from consideration: 13-22,26-29 and 37-42.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____


**JULIET C. SWITZER
PRIMARY EXAMINER**

Continuation of 3. NOTE: The amendment to at least claim 1 raises new issues for consideration, at least under 112 2nd paragraph. For example, it is not clear how a "statistically significant association" can exist in "each animal" since such an association exists within a population, not an individual. Further, the amendment to claim 47 raises the issue of new matter because the specification provides basis for the deletion of the recited nucleotide sequence FROM SEQ ID NO: 2, but does not provide for the insertion of the recited nucleotide sequence into SEQ ID NO: 2. This language is confusing and also appears to represent new matter.

Continuation of 11. does NOT place the application in condition for allowance because: Most of the remarks are directed towards the amended claims. Since the amendments were not entered, these remarks are moot and the rejections are maintained for the pending claims.

Applicant argues further at page 12 of the remarks that the terms referring to "favorable" traits are clear. Applicant states that the specification teaches that these qualities are "defined by the desired characteristics of the meat." However, this is precisely the point, because what is desirable to one person in meat quality may not be desirable to another person, and thus, the reference to "favorable" traits in the claims remains unclear. The rejection is maintained.

Regarding the haplotype identifiers, applicant argues that it is not necessary to describe which alleles correspond with which haplotype identifiers for the purposes of definiteness. However, this is not persuasive. Absent this knowledge, the identifiers are arbitrary numbering schemes that do not refer to any particular information. Applicant argues that they refer to the three identified haplotypes, but absent a knowledge of that these symbols represent, it is unclear how to practice the claimed method.

Applicant traverses the enablement rejection. Applicant's remarks provide broad statements without pointing to specific observations set forth in the specification ("Applicants teach that variation in the creatine kinase-muscle gene is associated with favorable muscle growth, favorable meat quality and breeding traits"). However, as discussed at length in the rejection, the data set forth in the specification do not appear to provide any particular trait that is predicted in all populations, and many which are inconsistently predicted in different populations. Simply put, the specification provides a great deal of inconsistent data that is very difficult to interpret and then makes broad conclusions that do not appear to be supported by the data.

Regarding the application of the recited methods to animals other than pigs, applicant argues that one could use BLAST comparison to identify polymorphisms in other species of animals. This is not persuasive because a difference between a pig gene and a cow gene, for example, identified by BLAST would not predictably mean that this is a polymorphic position within cows, or that this position is reliably associated with any traits. As noted in the rejection, this is a highly unpredictable art area. The rejections are maintained.